

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

**UNITED STATES OF AMERICA**

**CASE NO. 2:03-CR-20091-02**

**VERSUS**

**JUDGE JAMES D. CAIN, JR.**

**HERIBERTO MORALES (02)**

**MAGISTRATE JUDGE KAY**

**MEMORANDUM RULING**

Before the court is a Motion for Compassionate Release [doc. 122] filed by Heriberto Morales, who is serving a term of imprisonment imposed by this court. Mr. Morales seeks a reduction in sentence based on his age and health history, in light of the COVID-19 pandemic. The government opposes the motion. Doc. 124.

**I.  
BACKGROUND**

Mr. Morales is an inmate in the custody of the Bureau of Prisons and is currently incarcerated at the Federal Correctional Institute at Yazoo City, Mississippi. He is serving an eighteen-month term of imprisonment for conspiracy to escape from a federal prison, a violation of 18 U.S.C. § 371. That sentence was imposed by this court on November 30, 2004, but was ordered to run consecutive to the term that Mr. Morales was already serving. *See* docs. 66, 67. Accordingly, his anticipated release date is June 2022.

In June 2020 Mr. Morales filed a request for release to home confinement, arguing that he has served the majority of his combined terms, will soon be eligible for release to a residential re-entry center, and is at an increased risk of contracting COVID-19 due to his

age (56) and preexisting health conditions. Doc. 116. The government opposed the motion, arguing that the court lacks authority to order home confinement even under the current pandemic. Doc. 119. The court agreed and also rejected Mr. Morales's arguments that the government had violated his rights under the Eighth Amendment, on the grounds that this was not the proper venue for a *Bivens* suit based on complaints about events at FCI Yazoo City. Doc. 121.

Mr. Morales now brings a motion for compassionate release, seeking a reduction in his sentence because certain medical conditions place him at an increased risk of complications from the COVID-19 pandemic. Doc. 122. The government opposes the motion, arguing that Mr. Morales is not entitled to compassionate release and noting that he began receiving the Moderna COVID-19 vaccine series in May 2021. Doc. 124.

## **II. LAW & APPLICATION**

A sentence of imprisonment may only be modified by the district court in limited circumstances. *Dillon v. United States*, 560 U.S. 817, 825 (2010). The court may reduce a term of imprisonment for “extraordinary and compelling reasons” so long as they are “consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). Following passage of the First Step Act in 2018, inmates may use this provision to directly petition the court for compassionate release.


Here Mr. Morales cites his preexisting medical conditions and fear of the COVID-19 pandemic. As the government shows, however, he received his first dose of the Moderna COVID-19 vaccine in May 2021. Doc. 124, att. 1. Even if he has declined his second dose,

Mr. Morales has the opportunity to be fully protected against the virus by this point. His case does not present “extraordinary and compelling reasons” warranting a modification of his term of imprisonment.

**III.  
CONCLUSION**

For the reasons described above, the Motion for Compassionate Release [doc. 122] is **DENIED**.

**THUS DONE AND SIGNED** in Chambers on this 20th day of July, 2021.

  
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**JAMES D. CAIN, JR.**  
**UNITED STATES DISTRICT JUDGE**